TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~505.~~ ~~70~~ 79

THE UNITED STATES, APPELLANTS,

vs.

THE STEAMSHIP "CITY OF PARIS," HER ENGINES, ETC.—THE LIVERPOOL, NEW YORK, AND PHILADELPHIA STEAMSHIP COMPANY, OWNERS, AND JAMES KENNEDY, MASTER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 12, 1869.

5

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A UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 52, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of the United States, lib'l'ts, against the steamship City of Paris, &c., cl'nts & appellees, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 9th day of October, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the United States the ninety-fourth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-ct. int. rev. stamp canceled.]

1 District court of the United States of America for the southern district of New York.—Of December term, in the year one thousand eight hundred and sixty-seven.—Before the Honorable Samuel Blatchford, the district judge.

On the 6th day of December, in the year one thousand eight hundred and sixty-seven, comes Samuel G. Courtney, as the attorney of the United States in the said southern district of New York, to prosecute a civil action in which the United States are concerned, and informs the court—

That the United States of America bring suit herein against the steamship City of Paris, her engines, tackle, apparel, and furniture, being within said district on waters navigable from the sea by vessels of ten or more tons burthen; and against James Kennedy, the master of said vessel; and against the company known as the Liverpool, New York, and Philadelphia Steamship Company, the owner of the said vessel; in a cause civil and maritime of forfeiture for breach of the passenger laws of the United States; and that the matters relied on as grounds or causes of forfeiture are propounded in the following articles:

First. That during the period from January 1st, 1867, to the date hereof, the said City of Paris has been owned, in whole or in part, by the said steamship company, being a citizen of the United States, or a citizen of a foreign country, and has been employed, during said period by said owner, and by the said master thereof, in the carriage of passengers from Liverpool and Queenstown, foreign ports or places other than foreign contiguous territory of the United States, to the port and city of New York, subject to the provisions of the act of Congress approved the third day of March, one thousand eight hundred and fifty-five, entitled "An act to regulate the carriage of passengers in steamships and other vessels."

Second. That during said time and employment of said vessel as aforesaid, and at the several times and places hereinafter mentioned, the said City of Paris had berths which were not well constructed, and were not parallel with the sides of the vessel; and the said vessel then and there had berths which were not separated from each other by partitions, as berths ordinarily are separated; and the said vessel then and there had berths which were not at least six feet in length and at least ten $\frac{1}{10}$ feet wide, and which were divided into compartments by partition boards of one foot or less in width, and other berths six feet in length and six feet in width and wide as last aforesaid, each of which said berths, so divided as

aforesaid, was then and there occupied by more and by other than two women, or by one woman and two children under the age of eight years, or by husband and wife, or by a man and two of his own children under the age of eight years, or by two men, members of the same family; all of which was then and there contrary to the second section of the act of Congress aforesaid.

Third. That on or about the 20th day of January, one thousand eight hundred and sixty-seven, the said master of said City of Paris took on board said vessel at Liverpool and Queenstown aforesaid, two hundred and forty passengers, with intent to bring said passengers to the United States; and, having left said place with said passengers in said vessel, did, on the 5th day of February, one thousand eight hundred and sixty-seven, bring said passengers in said vessel into the port of the city of New York; and that during said voyage the berths of said passengers in said vessel were constructed and occupied as in the second article herein is charged, contrary to the said section of the act aforesaid; whereby the master of said vessel and the said owners thereof did severally forfeit and become liable to pay for each violation aforesaid of each of the 2 said provisions of the section aforesaid, the sum of five dollars for each passenger on board of said vessel on said voyage; and that the total amount thereby forfeited, to be recovered by the United States therefor, is seven thousand two hundred dollars.

Fourth. That on or about the 15th day of March, one thousand eight hundred and sixty-seven, the said master of the said City of Paris took on board said vessel at Liverpool and Queenstown aforesaid, two hundred and fifty-one passengers, with intent to bring said passengers to the United States, and, having left said place with said passengers in said vessel, did, on the 31st day of March, one thousand eight hundred and sixty-seven, bring said passengers in said vessel into the port of the city of New York; and that during said voyage the berths of said passengers in said vessel were constructed and occupied as in the second article herein is charged, contrary to the said section of the act aforesaid; whereby a forfeiture, in form as charged in the third article herein, did then and there accrue; and that the total amount so thereby forfeited for said last-mentioned voyage to be recovered by the United States therefor, is seven thousand five hundred and thirty dollars.

Fifth. That on or about the 20th day of April, one thousand eight hundred and sixty-seven, the said master of the said City of Paris took on board said vessel at Liverpool and Queenstown aforesaid eight hundred and ninety-one passengers, with intent to bring said passengers to the United States, and, having left said place with said passengers in said vessel, did, on the 5th day of May, one thousand eight hundred and sixty-seven, bring said passengers in said vessel into the port of the city of New York; and that during said voyage the berths of said passengers in said vessel were constructed and occupied as in the second article herein is charged, contrary to the said section of the act aforesaid; whereby a forfeiture, in form as charged in the third article herein, did then and there accrue; and that the total amount so thereby forfeited for said last-mentioned voyage, to be recovered by the United States therefor, is twenty-six thousand seven hundred and thirty dollars.

Sixth. That on or about the 1st day of June, one thousand eight hundred and sixty-seven, the said master of the said City of Paris took on board said vessel at Liverpool and Queenstown aforesaid eight hundred and sixty-five passengers, with intent to bring said passengers to the United States, and, having left said place with said passengers in said vessel, did, on the 10th day of June, one thousand eight hundred and sixty-

seven, bring said passengers in said vessel into the port of the city of New York; and that during said voyage the berths of said passengers in said vessel were constructed and occupied as in the second article herein is charged, contrary to the said section of the act aforesaid; whereby a forfeiture, in form as charged in the third article herein, did then and there accrue; and that the total amount so thereby forfeited for said last-mentioned voyage, to be recovered by the United States therefor, is twenty-five thousand nine hundred and fifty dollars.

Seventh. That on or about the 1st day of July, one thousand eight hundred and sixty-seven, the said master of the said City of Paris took on board said vessel at Liverpool and Queenstown aforesaid nine hundred and seventy-four passengers, with intent to bring said passengers to the United States, and, having left said place with said passengers in said vessel, did, on the 15th day of July, one thousand eight hundred and sixty-seven, bring said passengers in said vessel into the port of the city of New York; and that during said voyage the berths of said passengers in said vessel were constructed and occupied as in the second article herein is charged, contrary to the said section of the act aforesaid; whereby a forfeiture, in form as charged in the third article herein, did then and there accrue; and that the total amount so thereby forfeited for said last-mentioned voyage, to be recovered by the United States therefor, is twenty-nine thousand two hundred and twenty dollars.

Eighth. That on or about the 5th day of August, one thousand eight hundred and sixty-seven, the said master of the said City of Paris took on board said vessel at Liverpool and Queenstown aforesaid seven hundred and sixty-three passengers, with intent to bring said passengers to the United States, and, having left said place with said passengers in said vessel, did, on the 17th day of August, one thousand eight hundred and sixty-seven, bring said passengers in said vessel into the port of the city of New York; and that during said voyage the berths of said passengers in said vessel were constructed and occupied as in the second article herein is charged, contrary to the said section of the act aforesaid; whereby a forfeiture, in form as charged in the third article herein, did then and there accrue; and that the total amount so thereby forfeited for said last-mentioned voyage, to be recovered by the United States therefor, is twenty-two thousand eight hundred and ninety dollars.

3

Ninth. That on or about the 10th day of September, one thousand eight hundred and sixty-seven, the said master of the said City of Paris took on board said vessel at Liverpool and Queenstown aforesaid six hundred and twenty-seven passengers, with intent to bring said passengers to the United States, and, having left said place with said passengers in said vessel, did, on the 22d day of September, one thousand eight hundred and sixty-seven, bring said passengers in said vessel into the port of the city of New York; and that during said voyage the berths of said passengers in said vessel were constructed and occupied as in the second article herein is charged, contrary to the said section of the act aforesaid; whereby a forfeiture, in form as charged in the third article herein, did then and there accrue; and that the total amount so thereby forfeited for said last-mentioned voyage, to be recovered by the United States therefor, is eighteen thousand eight hundred and ten dollars.

Tenth. That on or about the 15th day of October, one thousand eight hundred and sixty-seven, the said master of the said City of Paris took on board said vessel at Liverpool and Queenstown aforesaid seven hundred and sixty-five passengers, with intent to bring said passengers to the United States, and, having left said place with said passengers in

said vessel, did, on the 28th day of October, one thousand eight hundred and sixty-seven, bring said passengers in said vessel into the port of the city of New York; and that during said voyage the berths of said passengers in said vessel were constructed and occupied as in the second article herein is charged, contrary to the said section of the act aforesaid; whereby a forfeiture, in form as charged in the third article herein, did then and there accrue; and that the total amount so thereby forfeited for said last-mentioned voyage, to be recovered by the United States therefor, is twenty-two thousand nine hundred and fifty dollars.

Eleventh. That on or about the 15th day of November, one thousand eight hundred and sixty-seven, the said master of the said City of Paris took on board said vessel at Liverpool and Queenstown aforesaid, five hundred and ninety-six passengers, with intent to bring said passengers to the United States, and, having left said place with said passengers in said vessel, did, on the 30th day of November, one thousand eight hundred and sixty-seven, bring said passengers in said vessel into the port of the city of New York; and that during said voyage the berths of said passengers in said vessel were constructed and occupied as in the second article herein is charged, contrary to the said section of the act aforesaid; whereby a forfeiture, in form as charged in the third article herein, did then and there accrue; and that the total amount so thereby forfeited for said last-mentioned voyage, to be recovered by the United States therefor, is seventeen thousand eight hundred and eighty dollars.

Twelfth. That on or about the day of , one thousand eight hundred and sixty- , the said master of the said , aforesaid, took on board said vessel at passengers, with intent to bring said passengers to the United States, and, having left said place with said passengers in said vessel, did, on the day of , one thousand eight hundred and sixty- , bring said passengers in said vessel into the port of the city of New York; and that during said voyage the berths of said passengers in said vessel were constructed and occupied as in the second article herein is charged, contrary to the said section of the act aforesaid; whereby a forfeiture, in form as charged in the third article herein, did then and there accrue; and that the total amount so thereby forfeited for said last-mentioned voyage, to be recovered by the United States therefor, is dollars.

4 And the said attorney of the United States, in behalf of the United States, saith that all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court; and that by reason thereof, and by force of the statute in such case made and provided, the amount of the said several penalties incurred as aforesaid, to wit, the sum of one hundred and seventy-nine thousand one hundred and sixty dollars, became and is a lien on the said vessel, and that the said vessel thereby became and is liable to be libelled therefor in this court.

Wherefore he prays that due process issue to enforce the said forfeiture, as well by warrant of arrest of the said vessel, as by monition in the nature of a summons to the said the master and the owner thereof to appear and answer to this suit; and that due notice be given to all persons concerned in interest to appear and show cause at the return day of the said process, why the said forfeiture and lien should not be decreed; and all due proceedings being had thereon, that, for the causes aforesaid, and others appearing, this honorable court may be pleased to decree for the forfeiture aforesaid, and that the said City of Paris, her [illegible] proceeded against for the same,

and sold to satisfy the lien aforesaid and the costs herein; and that the proceeds of such sale, or of such other disposition of said property as the court shall direct, be distributed according to law; and for such other and further order and relief in the premises as to the court shall seem just.

SAMUEL G. COURTNEY,
United States Attorney for the Southern District of New York.

(Indorsed:) 21—546. United States district court. The United States ag't the steamship City of Paris, &c., and James Kennedy, master, & the Liverpool, New York, and Philadelphia Steamship Co., owners. Libel of information. §2, March 3, 1855. S. G. Courtney, U. S. attorney. $179,160 $\frac{00}{100}$.

Filed Dec. 6th, 1867.

5 SOUTHERN DISTRICT OF NEW YORK, *ss:*

[SEAL.] The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel of information in rem and personam hath been filed in the district court of the United States for the southern district of New York, on the sixth day of Dec'r, in the year of our Lord one thousand eight hundred and sixty-seven, by Samuel G. Courtney, esq., U. S. district attorney, on behalf of the United States of America, against the steamship City of Paris, her engines, tackle, &c., and against James Kennedy, master of said steamship, and against the company known as the Liverpool, New York, and Philadelphia Steamship Company, owners of said steamship, 2§, 2 Mar., 1855, penalties of information ($179,160 00), for the reasons and causes in the said libel of information mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said st'sh'p or vessel, her engines, tackle, &c., may be cited, in general and special, to answer the premises, and, all proceedings being had, that the said st'ship or vessel, her engines, tackle, &c., may, for the causes in the said libel of information mentioned, be deemed to be forfeited, and condemned and sold to pay the lien of the informants & costs:

You are therefore hereby commanded to attach the said st'ship or vessel, her engines, tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be forfeited & condemned and sold, pursuant to the prayer of the said libel of information, that they be and appear before the said court to be held in and for the southern district of New York, on the 24th day of Dec'r next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And we do hereby further empower and strictly charge and command you, the said marshal, that you cite and admonish the said James Kennedy, master, & the Liverpool, N. Y., & Philadelphia St'ship Co., owner of said steamship, respondent, if they shall be found in your district, that they be and appear before the said district court, on the 24 day of Dec'r, at the U. S. court-rooms in the city of New York, then and there to answer the said libel of information, and to make their allegations in that behalf; and have you then there this writ, with your return thereon.

Witness the Honorable Samuel Blatchford, judge of said court, this sixth day of Dec'r, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the ninety-second.

GEO. F. BETTS, *Clerk.*

SAMUEL G. COURTNEY,
U. S. Dist. Att'y.

6 (Indorsed:) Vol. 21, page 546. Southern district of New York, United States district court. The United States vs. the st'ship City of Paris, her engines, &c. Process in rem and personam. Ret'ble Dec. 24, 1867. S. G. Courtney, proctor for libellant.

Filed Dec'r 24, 1867.

I hereby depute L. Bates to execute the within process.
Dated Dec. 6, 1867.

R. MURRAY, *U. S. Marshal.*

In obedience to the within monition, I attached the st'ship City of Paris, therein described, on the 6 of Dec., 1867, and have given due notice to all persons claiming the same, that this court will, on the 24 day of Dec'r, inst. (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

R. MURRAY, *U. S. Marshal.*

Dated Dec. 24, 1867.

7 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Saturday, the seventh day of December, in the year of our Lord one thousand eight hundred and sixty-seven:

Present, the Honorable Samuel Blatchford, district judge.

THE ST'SHIP CITY OF PARIS, &c., } *claimant.*
THE UNITED STATES. }

And now John G. Dale, agent of the Liverpool, New York, & Philadelphia St'ship Company, intervening for the interest of said company, owners of the said st'ship, &c., appears before the honorable court and makes claim to the said st'ship, &c., &c., as the same are attached by the marshal, under process of this court, at the instance of the United States; and the said John G. Dale avers that said company was in possession of the said st'ship at the time of the attachment thereof, and that the company above named is the true and bona-fide owner of the said st'ship, and that no other person is the owner thereof, and the said Dale the true and lawful bailee thereof, as agent; wherefore he prays to defend accordingly.

LIVERPOOL, NEW YORK, & PHILA. ST'SHIP CO.,
By JOHN G. DALE, *Agent.*

PLATT, GERARD & BUCKLEY,
Proctor for Claimant.

8 SOUTHERN DISTRICT OF NEW YORK, *ss:*

John G. Dale, being duly sworn, deposes and says that he resides in the southern district of New York; that he is the agent of the Liverpool, New York, & Phil. St'ship Company within named; that the owners of said st'ship reside in England and elsewhere, and that this deponent is duly authorized to put in this claim in behalf of the owner of the said st'ship, &c.; and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

JOHN G. DALE.

Sworn and subscribed this 7th day of December, A. D. 18 , before me.

GEO. F. BETTS,
U. S. Commissioner.

(Indorsed:) Vol 21, No. 546. United States district court for the southern district of New York. The st'ship City of Paris, &c., asm. the United States. Platt, Gerard & Buckley, proctor for claimant. Claim of agent.

Filed the seventh day of December, 1867.

9 *Respondent's costs.*

District court of the United States for the southern district of New York.

Filed the 7th day of Dec'r, 1867.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel of information in rem & personam was filed in this court on the sixth day of December, in the year of our Lord one thousand eight hundred and sixty-seven, by Samuel G. Courtney, esq., U. S. district attorney, on behalf of the United States of America, against the st'ship "City of Paris," her engines & tackle, &c., and James Kennedy, master, and the Liverpool, New York, & Philadelphia St'ship Company, owners of said vessel, for the reasons and causes in the said libel of information mentioned, and praying that said vessel, &c., may be forfeited, condemned, & sold to pay the lien of the informants, and the parties hereto hereby consenting, that, in case of default or contumacy on the part of the claimants or their surety, execution for the sum of two hundred & fifty dollars may issue against their goods, chattels, and lands:

And whereas, also, a claim has been filed in said cause by John G. Dale, agent of the Liverpool, New York, & Philadelphia Steamship Company:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred & fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court or, upon an appeal, by the appellate court.

THE LIVERPOOL, N. Y. & PHIL. ST'SHIP CO.,
By JOHN G. DALE, *Ag't.*
JOHN G. DALE.

Taken and acknowledged this 7th day of December, 1867, before me.

GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John G. Dale, part to the above stipulation, being duly sworn, doth depose and say that he resides in the southern district of New York, &c.; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JOHN G. DALE.

Sworn to this 7th day of December, 1867, before me.

GEO. F. BETTS,
U. S. Commissioner.

Recorded the 7th day of Dec., 1867.

GEO. F. BETTS, *Clerk.*

10

11 District court of the United States for the southern district of New York.—In admiralty.

Filed the 7th day of Dec'r, 1867.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel of information in rem & personam was filed on the sixth day of December, in the year of our Lord one thousand eight hundred and sixty-seven, by Samuel G. Courtney, esq., U. S. district attorney, on behalf of the United States of America against the st'ship "City of Paris," her engines, tackle, &c., and James Kennedy, master of said vessel, and the Liverpool, New York, and Philadelphia Steamship Company, owners of said vessel, for the reasons and causes in the said libel of information mentioned, and whereas the said st'ship "City of Paris," her engines, tackle, &c., are in the custody of the marshal, under the process issued in pursuance of the prayer of said libel of information, & whereas, by an order of the court made this 7th day of Dec., 1867, it is ordered that said vessel, &c., be released & discharged from custody on the above-named company filing claim thereto, & executing stipulations for costs & value, the latter in the sum of one hundred & seventy-nine thousand six hundred dollars ($179,600$^{00}_{100}$), to be signed by John G. Dale as surety, who shall justify in same of ten thousand dollars, said company, claimants of said vessel, stipulating within thirty days (30) from this date to furnish a surety or sureties satisfactory to the court, who shall execute said stipulation, & justify in the aforesaid sum of one hundred and seventy-nine thousand six hundred dollars, the vessel to redelivered to the marshal, as appears from said order of court now on file in said court; and the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the claimants, or their surety, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulator undersigned shall, at any time, upon the final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree, to Platt, Gerard & Buckley, esquire, proctor for the claimants of said st'ship, her engines, &c., abide by and pay the money awarded by the final decree rendered by the court or the appellate court, if any appeal inter-

vene, then this stipulation to be void; otherwise to remain in full force and virtue.

LIVERPOOL, NEW YORK, & PHILA. STEAMSHIP CO.,
JOHN G. DALE, *Agent.*
By JOHN G. DALE.

Taken and acknowledged this seventh day of December, 1867, before me.

GEO. F. BETTS,
U. S. Commissioner.

12 SOUTHERN DISTRICT OF NEW YORK, *ss:*

John G. Dale, party to the above stipulation, being duly deposes and says that he is the agent of the within-named company; that he resides in the southern district of New York; that he is worth the sum of ten thousand dollars over and above all his just debts and liabilities.

JOHN G. DALE.

Sworn to this seventh day of December, 1867, before me.

GEO. F. BETTS,
U. S. Commissioner.

Recorded this seventh day of December, 1867.

13 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Saturday, the seventh day of December, in the year of our Lord one thousand eight hundred and sixty-seven:

Present, the Honorable Samuel Blatchford, district judge.

THE UNITED STATES
vs.
THE STEAMSHIP "CITY OF PARIS;" JAMES KENNEDY, master of said vessel; and the Liverpool, New York, and Philadelphia Steamship Company, owners of said vessel. } 21—546.

The Liverpool, New York, & Philadelphia Steamship Company, claimants of the steamer "City of Paris," having filed their claim herein and executed a stipulation for value, with John G. Dale as surety, in the sum of one hundred and seventy-nine thousand six hundred dollars, the said Dale to justify in the sum of ten thousand dollars:

It is ordered that said vessel be, and the same is, released from the custody of the marshall, said claimants stipulating, within 30 days from this date, to furnish a surety or sureties satisfactory to this court who shall execute said stipulation, and justify in the aforesaid sum of one hundred & seventy-nine thousand six hundred dollars. And it is further ordered that if said surety be not so furnished as aforesaid, that the vessel be redelivered to said marshall.

SAM'L BLATCHFORD.

14

15 At a stated term of the district court of the United States of America for the southern district of New York, held at the Uni-

ted States court-rooms in the city of New York, on Saturday, the seventh day of December, in the year of our Lord one thousand eight hundred and sixty :

Present, the Honorable Samuel Blatchford, district judge.

THE UNITED STATES
vs.
THE ST'SHIP CITY OF PARIS, &c., MASTER & OWNERS. } 21—546.

The claimants having complied with terms of the order of court made and entered herein this day, on motion of [of] Platt, Gerard & Buckley for claimants, it is ordered that the appearance of said claimants be, and the same is hereby, entered herein, & that said st'ship, &c., be discharged from custody.

16

17 U. S. district court, S. D. of New York.

THE UNITED STATES
ag'st
THE STEAMSHIP "CITY OF PARIS," &c.

SIR: Take notice the we appear in this action as proctors for the above-named steamship, and James Kennedy, the master thereof, and the Liverpool, New York, and Philadelphia Steamship Company, the owners thereof, and pray that our appearance herein be entered accordingly.

New York, Feb'y 5th, 1869.

Yours, &c.,

PLATT, GERARD & BUCKLEY,
Proc. for Cl'm'ts & Resp'd'ts.

To S. G. COURTNEY, Esq., *U. S. Att'y.*

I hereby consent that the above appearance be entered in this action nunc pro tunc as of the 24th day of December, 1867.

New York, Feb'y 5th, 1869.

S. G. COURTNEY, *U. S. Att'y.*

Endorsed: 21—546. U. S. district court, S. D. of New York.

18

19 District court of the United States for the southern district of New York.

To the Honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The exceptions of the Liverpool, New York, and Philadelphia Steamship Company, a foreign corporation created under the laws of the United Kingdom of Great Britain and Ireland, and claimants of the steamship "City of Paris," her tackle, apparel, &c., and of James Kennedy, master of said vessel, to the libel or information of the United States of America, prosecuted by Samuel G. Courtney, as their attorney for the southern district of New York, allege and propound and articulately propound as follows:

First. That the said libel or information in the several and respective counts or articles thereof states no sufficient cause of action against the

said vessel in rem, or against these claimants and respondents, or either of them, in personam.

Second. Because this honorable court hath not jurisdiction on
20 its instances side in admiralty, under Constitution or laws of the United States, to entertain the present action, or to grant the relief prayed for in the said libel or information, and that it hath not taken and ought not to take cognizance of the same.

Third. Because if this honorable court hath any jurisdiction, the said libel or information should have averred a preliminary existing seizure of said vessel, her tackle, &c., as the foundation for the prosecution of said action.

Fourth. For that the said steamer "City of Paris" is not [*in part* owned in] whole or part by a citizen of the United States, or by a citizen of any foreign country, but by a foreign corporation, to wit, the Liverpool, New York, and Philadelphia Steamship Company, by reason whereof neither the said vessel in rem, nor the said respondents, or either of them, in personam, are liable to the penalties or subject to the provisions of the act of Congress in the said libel or information set forth.

Fifth. That the violation of the said act of Congress in the
21 second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, and eleven counts, or articles of the said libel or information alleged, occured out of the jurisdiction of this honorable court, and outside of the territorial limits of the United States of America.

Sixth. That the libel or information misjoins in the same action a proceeding in rem against the steamer "City of Paris," her tackle, &c., with an action in personam against these respondents, the Liverpool, New York, & Philadelphia Steamship Company, the owners of said vessel, and this respondent James Kennedy, the master thereof.

Seventh. That there is in other respects a misjoinder of parties who cannot be rightfully be joined, and a misjoinder of causes of action in that the said several alleged causes of action require different modes of trial.

Eighth. In that section of the said act of Congress in the said libel set forth provides for but a single penalty of five dollars for each passenger on board of said vessel at the time of such alleged allegations, and that the said several penalties claimed to be recovered in the second,
22 third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, and eleventh counts, or articles of said libel or information, are not recoverable in this action in rem or personam.

Ninth. That by said libel or information it appears that the said steamship, after the occurrence of the matter alleged in each of the third to the eleventh counts, or articles of said libel or information, inclusive, had left the port of New York, and had proceeded on another voyage or other voyages on the high seas, beyond the jurisdiction of this honorable court and beyond the territorial limits of the United States, without having been seized or attached, or without the exhibition of any libel or information, whereby jurisdiction to entertain the same hath been lost.

Tenth. That the provisions of the act of Congress alleged in the said information or libel to have been violated do not apply to or include vessels propelled in whole or in part by steam.

Eleventh. For that the said libel or information is in other respects insufficient, informal, and defective.

PLATT, GERARD & BUCKLEY,
Proctors for Claimants.

23 (Endorsed:) 21—546. U. S. district court, S. D. of N. Y. The United States vs. the steamship "City of Paris," &c. Exceptions. Platt, Gerard & Buckley, proc's for cl'm'ts and resp'ts.

Filed Jan'y 3d, 1868.

24

25 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Friday, the 10th day of January, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Blatchford, dist. judge.

THE UNITED STATES
vs.
THE STEAMSHIP CITY OF PARIS, HER ENGINES, &c., master, & owners.

This cause being called in its order on the calendar, ordered hearing on exceptions filed to the informations herein.

Pleadings & exceptions read.

Mr. T. C. T. Buckley argues in favor of the exceptions, on the part of the claimants.

Cause adj'd to to-morrow at 11 a. m.

JANUARY 11*th*, 1868.—Cause continued.

Mr. Simons, on behalf of the United States, argues in opposition to the exceptions. Tenth exception allowed. Libel dismissed.

26 See decree.

27 At a stated term of the district court of the United States of America, for the southern district of New York, held at the United States court-rooms in the city of New York, on Saturday, the eleventh day of January, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Blatchford, district judge.

THE UNITED STATES OF AMERICA
vs.
THE ST'SHIP "CITY OF PARIS," HER ENGINES, &c., and James Kennedy, master, & the Liverpool, New York, & Philadelphia Steamship Company, owners, of said vessel. } 21—546.

This cause coming on to be heard on exceptions filed to libel herein, after hearing Thomas C. T. Buckley, esq., for claimants, and J. N. Simons, assistant dist. att'y for the United States, and due deliberation being had in the premises, it is ordered, adjudged, and decreed by the court, without passing upon any of the other exceptions taken to libel, that the tenth exception is well taken and is

28 hereby sustained, and that the libel be and the same is hereby dismissed.

SAM'L BLATCHFORD.

(Endorsed:) 21—546. The United States vs. the st'ship "City of Paris," &c., master, and owner.

29 District court of the United States for the southern district of New York.

THE UNITED STATES
vs.
THE STEAMSHIP CITY OF PARIS, HER ENGINES, &c., and James Kennedy, master, and the Liverpool, New York, and Philadelphia Steamship Company, owners.

SIR: The United States intend to appeal from the final decree of the court in this cause, Jan'y 21st, 1868.

S. G. COURTNEY, *U. S. Att'y.*

To GEO. F. BETTS, *Clerk.*

(Endorsed:) 21—546. U. S. district court. The United States vs. the steamship "City of Paris," &c., &c. Notice of appeal. S. G. Courtney, U. S. att'y.

Filed Jan'y 21st, 1868.

30

31 In admiralty.—U. S. court for the southern district of New York.

THE UNITED STATES, APPELLANTS,
vs.
THE STEAMSHIP "CITY OF PARIS," HER ENGINES, &c., the Liverpool, New York, and Philadelphia Steamship Company, owners, and James Kennedy, master.

To the honorable the circuit court of the United States for the southern district of New York, in the second circuit:

The appeal of the above-named appellants respectfully shows that on the 6th day of December, 1867, Samuel G. Courtney, the attorney of the said United States for said district, on their behalf, filed a libel of information in the district court of the United States for said district, against the said steamship "City of Paris," her engines, tackle, apparel, and furniture, the said owners, and master, in an alleged cause, civil and maritime, of forfeiture for violation of passenger laws of the United States, articulately propounding—

That during certain voyages of said vessel, upon which passen-
32 gers were brought within the jurisdiction of the United States from certain foreign places, the berths for said passengers in said vessel were not constructed, and were not occupied, as required by the second section of the act of Congress approved March 3, 1855, entitled "An act to regulate the carriage of passengers in steamships and other vessels," whereby the master and the owners of said vessel did severally forfeit, for each provision of said section therein charged as violated, the sum of five dollars for each passenger on board on the voyage, and that the total amount thereby forfeited to the United States was $179,160 00, which sum, by virtue of the provisions of said act, became a lien on said vessel, for which said vessel was subject to be libelled in said court.

Wherefore due process was prayed in that behalf, as well a warrant of arrest of said vessel, as of monition in the nature of a summons to

said owners and master, and to all concerned in interest, to appear and answer the said allegations; and that the court should decree the said forfeiture against said defendants, respectively, as charged, and
33 that said vessel should be condemned and sold to satisfy the said lien; whereupon such process was issued, and said vessel by virtue thereof.

That on or about the 7th day of October, 1867, the Liverpool, New York, and Philadelphia Steamship Company appearing as well to defend said action in personam as to intervene for their interest in said vessel, &c., &c., filed their claim as sole owners of said vessel, and executed a certain stipulation for costs and value, upon which said steamship was released to said claimants from the custody of the court, and said master also appeared to defend the said action.

That on January 3d, 1868, the said claimants and defendants filed exceptions to the said libel of information, praying that, for the various causes therein set forth, the said libel of information should be dismissed, as by references to said exceptions will more fully appear.

That said cause came on to be heard before the Honorable Samuel Blatchford, judge of said district court, on the said libel of information and exceptions; and, upon hearing the same, the said court did
34 adjudge the tenth exception of the said claimants, to wit, that the requirements of the second section of the act of Congress, referred to in said libel, do not apply to steamships, to be sufficient in law to bar said action, and did thereupon for said reason, and without passing upon any other of the exceptions interposed by said claimants as aforesaid, decree that the said libel of information be dismissed; which decree was entered and filed Jan. 11th, 1868.

And the said appellants say that said judgment and decree of the district court herein is erroneous, and that the said libel of information was and is good and sufficient in law, anything in the said exceptions of the said claimants contained to the contrary notwithstanding.

Wherefore the said appellants bring this appeal from the said decree to the next circuit court to be held in said district, whereon they intend to have said cause heard anew on the said libel of information and exceptions interposed thereto; and they pray that the record and proceedings in said cause may be returned to the said circuit court, and
35 that said decree may be reversed with costs, and that such other decree may be made herein as to the said circuit court may seem just.

S. G. COURTNEY,
U. S. Attorney.

36

37 United States district court.—In admiralty.

THE UNITED STATES OF AMERICA
against
THE STEAMSHIP "CITY OF PARIS."

UNITED STATES OF AMERICA,
Southern District of New York, ss:

John G. Dale, of said district, being duly sworn, deposes and says that he is the general agent in this country of the Liverpool, New York, and Philadelphia Steamship Company, a corporation existing under the laws of Great Britain, and owners of the steamship "City of Paris."

That the steamship "City of Paris" is a vessel of 2,600 tons burthen, and is of the value of five hundred thousand dollars in gold coin, and is

one of a line of fourteen steamers belonging to a company engaged in performing a weekly postal service between this port and the port of Liverpool, under a contract with the government of the United States, and that the aggregate value of the vessels composing said line, exclusive of the said steamer "City of Paris," is at least the sum of
38 three millions of dollars in gold coin, and that there is always at this port, subject to the process of this court, at least of said steamers.

That on the sixth day of December, 1867, a libel of information was filed in this court by Samuel G. Courtney, esq., district attorney, on behalf of the United States against the steamer "City of Paris," in rem, and against the owners thereof and its master, in personam, to recover certain penalties alleged to have been incurred by said steamer for violation of the United States passenger act, passed March 2d, 1855.

That the amount claimed to be due, according to the construction of said act, presented by the district attorney in the libel filed aforesaid, is one hundred and seventy-nine thousand one hundred and sixty dollars; but this deponent is advised that if any penalty are at all recoverable by the true construction, they cannot exceed nine thousand six hundred dollars.

39 That on said sixth day of December, 1867, the Liverpool, New York, & Philadelphia Steamship Company interposed their claim to said vessel, and appeared in this action and entered into the usual stipulation for costs and value, but have not as yet given any additional surety, their time to furnish the same having been extended thirty days.

That procure such surety will entail on these claimants a heavy expense for commissions, and will not, deponent respectfully submits, increase the surety of the government, inasmuch as there will always be property of these claimants in port more than sufficient to satisfy a decree even for the whole amount claimed by the district attorney.

JOHN G. DALE.

Sworn to before me 3d day of January, 1868.
[SEAL.] GEO. HOFFMAN, *Notary Public.*

On the above affidavit and on the pleading and proceedings herein, let Samuel G. Courtney show cause before me, on the 7th
40 day of January inst., at the opening of the court on that day, or as soon thereafter as counsel can be heard, why the stipulation already on file, with John G. Dale as surety, should not stand as the stipulation in this action, representing the steamer "City of Paris," or why the said claimants should not have such further or other relief as may be proper.

Dated N. Y., Jan'y 3d, 1868.

SAM'L BLATCHFORD.

(Endorsed:) 21—546. U. S. district court. In admiralty. The United States of America against the steamship "City of Paris," her tackle, apparel, &c.

41 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Saturday, the first day of February, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Blatchford, dist. judge.

THE UNITED STATES OF AMERICA
vs.
THE STEAMSHIP CITY OF PARIS, her tackle, &c., et al. } 21—546.

On reading and filing affidavit of John G. Dale, and order to show cause heretofore granted by me, and on hearing Mr. Buckley for the claimants, and Mr. Simons, ass't dist. att'y in opposition thereto, ordered that the stipulations already on file stand as the stipulation for costs and value in the above-entitled action; and that so much of the order heretofore made by me, as required said claimants to file any further stipulation, or to give additional sureties be discharged, the claimants being required, in case of any change of ownership of said vessel, to give
42 ten days' notice of such intended to the U. S. district attorney.

SAMUEL BLATCHFORD.

(Endorsed:) 21—546. The United States ag'st the steamship "City of Paris."

43 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the city hall, in the city of New York, on Thursday, the 28 day of May, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

THE UNITED STATES
vs.
THE STEAMSHIP CITY OF PARIS.

The appeal in the above case from the decree of the district court coming on to be heard—

Mr. Simon is heard on part of the United States & libellant.
Mr. Buckley is heard on part of claimant & appellee.
Cur. ado. vult.

44

45 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the city hall, in the city of New York, on Friday, the 13th day of November, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

THE UNITED STATES
vs.
THE STEAMSHIP "CITY OF PARIS," &c.

This cause having been brought to a hearing upon the appeal taken by the United States from the decree of the district court entered herein, and dated the eleventh day of January, 1868, after hearing S. G. Courtney, district attorney, for the United States, and Thomas C. T. Buckley, for the claimants & appellees, and due deliberation being thereupon had, it is ordered, adjudged, and decreed that the decree of the circuit court dismissing the libel herein be, and the same is, in all things affirmed.

Filed Nov'r 13, 1868.

46

THE UNITED STATES OF AMERICA, APPELLANTS,
vs.
THE STEAMSHIP CITY OF PARIS, HER ENGINES, &c.; James Kennedy, master; and the Liverpool, New York, & Philadelphia Steamship Company, owners—James Kennedy, respondent, & the Liverpool, New York and Philadelphia Steamship Company, complainants and respondents.

To the honorable the Supreme Court of the United States:

The appeal of the United States of America respectfully showeth that on the 6th day of December, 1867, Samuel G. Courtney, their attorney for the southern district of New York, filed his libel of information in the district court of the United States for said southern district of New York against the steamship City of Paris, her engines, &c., and against James Kennedy, master, & against the Liverpool, New York, & Philadelphia Steamship Company, owners thereof, in a cause, civil and maritime, for the recovery of penalties alleged to have been incurred by the master and by the owners of the said City of Paris, respectively, by reason of certain violations of the second section of the act of Congress, approved March 3d, 1855, entitled "An act to regulate the carriage of passengers in steamships and other vessels," and which said penalties were alleged by the fifteenth section of said act to be a lien upon the said City of Paris, her engines, &c.; and that the said steamship was arrested upon process issued upon said libel of information, and was discharged upon the filing of a claim, and entering into stipulations therefor, by the Liverpool, New York, & Philadelphia Steamship Company,
48 who, thereafter, with the said James Kennedy, master as aforesaid, filed exceptive allegations to the matters in said libel of information contained, and such proceedings were had in the said cause, that, on the 11th day of January, 1868, a final decree was made and pronounced therein by the said district court, wherein it was in substance adjudged, that the tenth exception of the said claimants and respondents to the said libel of information be sustained, and by reason thereof that the said libel of information be dismissed.

And that after such final decree, the United States duly appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court and there tried anew; and such proceedings were had in the said circuit court that, afterwards, on the 2d day of October, 1868, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be in all things affirmed, which said decree of the circuit court is, as the appellants are advised, erroneous, and ought to be reversed.

Wherefore the appellants appeal from the whole of said decree of the said circuit court to the Supreme Court of the United States, and respectfully pray that the said decree of the said circuit court, and the libel of information, exceptive allegations, pleadings, and proceedings in the said cause, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and

every part thereof may be reversed, and such other decree in the premises as to the said Supreme Court shall seem just.

Dated New York, November, 1868.

SAMUEL G. COURTNEY,
U. S. Att'y for the Southern District of New York.

49 (Endorsed:) The United States, app'l'ts, vs. the steamship City of Paris, her engines, &c.—Jas. Kennedy, resp't, &c., cl'nts & respondents. Petition of appeal. S. G. Courtney, U. S. att'y.

Filed Nov. 30, 1868.

50

51 By the Honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to the Liverpool, New York, and Philadelphia Steamship Company, and James Kennedy:

Whereas the United States of America, heretofore by Samuel G. Courtney, their attorney for the said southern district of New York, brought suit against the steamship City of Paris, her engines, &c., and James Kennedy, master, and the Liverpool, New York, and Philadelphia Steamship Company, owners thereof, and have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, in favor of you, the said the Liverpool, New York, and Philadelphia Steamship Company, and James Kennedy, and against the said United States, you are therefore hereby cited to appear before the said Supreme Court at the City of Washington, on the 21st day of December
52 next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the 2d circuit, on the 30 day of November, in the year of our Lord 1868, and of the independence of the United States the ninety-third.

SAM'L BLATCHFORD.

Endorsed: U. S. circuit court. United States v. the steamship City of Paris, her engines, &c., &c., &c.

Due service of a copy of the within citation is hereby admitted.

New York, Nov'r 30, 1868.

PLATT, GERARD & BUCKLEY.
Pr. for Claimants.

Filed Dec. 1st, 1868.

(Indorsement on record:) S. New York. C. C. U. S. No. 505. The United States, appellants, vs. the steamship "City of Paris," her engines, &c., the Liverpool, New York, and Philadelphia Steamship Company, owners, and James Kennedy, master.

Filed 12th October, 1869.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

THE UNITED STATES, *Appellants*,
vs.
THE STEAMSHIP "CITY OF PARIS," HER ENGINES, ETC.; THE LIVERPOOL, NEW YORK, AND PHILADELPHIA STEAMSHIP COMPANY, owners; AND JAMES KENNEDY, Master.

No. ~~270~~ 79

Appeal from the Circuit Court of the United States for the Southern District of New York.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

THE UNITED STATES, *Appellants*,
vs.
THE STEAMSHIP "CITY OF PARIS," HER ENGINES, ETC.; THE LIVERPOOL, NEW YORK, AND PHILADELPHIA STEAMSHIP COMPANY, owners; AND JAMES KENNEDY, Master. } No. 270.

Appeal from the Circuit Court of the United States for the Southern District of New York.

BRIEF FOR THE UNITED STATES.

This is an appeal from a decree of the circuit court of the United States for the Southern District of New York, which was in affirmance of a decree of the district court of the United States for that district dismissing an information *in rem* and *in personam* against the steamship "City of Paris," her master, and owners, for a forfeiture claimed on account of alleged violations of the 2d Section of the act of March 3, 1855, entitled "An act to regulate the carriage of passengers in steamships and other vessels." (10 Stat., 715.)

The libel was filed in the district court, in behalf of the United States, on the 6th of December, 1867.

On the 3d of January, 1868, claimants filed exceptions thereto, which included, among others, the following:

"Tenth. That the provisions of the act of Congress alleged in the said information or libel to have been violated do not apply to or include vessels propelled in whole or in part by steam."

The cause coming on to be heard on the 11th of January, 1868, upon the exceptions filed, the court, without considering any of the other exceptions taken, sustained the tenth, quoted above, and dismissed the libel.

Thereupon an appeal was taken to the circuit court, wherein the cause was brought to a hearing on the 13th of November, 1868, when a decree was rendered affirming the decree of the district court.

The principal question presented is, whether the 2d section of said act, upon which this proceeding is based, was intended to apply to steamships or vessels propelled in whole or in part by steam.

I.

The most important and conclusive testimony of the legislative intent is that which is furnished by an investigation of the general design and spirit of the act.

It is entitled "An act to regulate the carriage of passengers in steamships and other vessels."

The first section is mainly designed to prevent and punish the practice of overcrowding the passengers in

the spaces appropriated in the different parts of the vessel to their use. It provides sundry regulations relating to such spaces, and, among others, that no greater number of passengers shall be carried in a given space than in the proportion of one passenger for each sixteen or eighteen feet of deck in such space, according as it may be on the upper or lower deck. It provides for a hospital for the passengers in such space, and also limits the number of passengers on board by a proportion based on the tonnage of the vessel.

The second section aims to insure a proper regard for the convenience and protection of the passengers, by regulating the construction of their berth accommodations, and to enforce the observance of ordinary decency in the assignment of such berths to passengers for occupation.

The third section provides for safe and convenient means of communication with the upper decks from the apartments of the passengers.

The fourth section carefully provides for the ventilation of such apartments.

The fifth section provides for convenient arrangements for cooking for the passengers.

The sixth section contains exceedingly specific and important regulations of the quantity and quality of provisions and water to be supplied to the passengers during the voyage, and the manner of preparation and distribution; providing also suitable remedies both of a private and public nature for their enforcement.

The seventh section provides sanitary regulations relating to cleanliness, the use of disinfectants, &c.

The eighth section imposes a penalty upon the master and owner for failure to comply with the provisions of the third, fourth, and fifth sections, touching the conveniences thereby required for the comfort of passengers.

The ninth section provides for the examination of the vessel by one or more inspectors of customs, who are to report in writing to the collector of the port whether the requirements of the law have been complied with in respect to the vessel.

Then follows the tenth section, which is in these words:

"That the provisions, requisitions, penalties, and liens of this act, relating to the space in vessels appropriated to the use of passengers, are hereby extended and made applicable to all spaces appropriated to the use of steerage passengers in vessels propelled in whole or in part by steam, and navigating from, to, and between the ports, and in manner as in this act named, and to such vessels and to the masters thereof; and so much of the act entitled, 'An act to amend an act entitled an act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam, and for other purposes,' approved August 30, 1852, as conflicts with this act, is hereby repealed; and the space appropriated to the use of steerage passengers in vessels so as above propelled and navigated is hereby subject to the supervision and inspection of the collector of the customs at any port of the United States at which any such vessel shall arrive, or from which she shall be about to depart; and the same shall be examined and reported in the same manner and by

the same officers by the next preceding section directed to examine and report."

The eleventh section exempts vessels plying between the United States and places on the Pacific ocean from the previous regulations as to provisions and water, and provides specially for them in that regard.

The twelfth section requires the master of the vessel, on arrival, to present to the collector of the port a manifest or list containing certain statistics of general interest.

The thirteenth section requires the collector to forward copies of such lists quarter-yearly to the Secretary of State, to be laid before Congress at each session.

The fourteenth section requires the master to report all deaths of passengers on the voyage, and to pay to the collector ten dollars for each death of a passenger over eight years of age, such amount to be paid over to certain benevolent associations established for the benefit of immigrants.

The fifteenth section declares "that the amount of the several penalties imposed by the foregoing provisions regulating the carriage of passengers in merchant vessels shall be liens on the vessel or vessels violating these provisions, and such vessel or vessels shall be libelled therefor in any circuit or district court of the United States where such vessel or vessels shall arrive."

The sixteenth section subjects vessels of African colonization societies to the application of this act.

The seventeenth section requires the collector of the

port, on the arrival of each immigrant vessel, to ascertain and report to the Secretary of the Treasury the facts concerning its ventilation, the food supplied, statistics as to deaths on board, and other matters essential to promote the objects of the act.

The eighteenth section provides when the act shall take effect.

The remaining section, the nineteenth, repeals the following acts therein enumerated: Act of March 2, 1819, chap. 46; act of Feb. 22, 1847, chap. 16; act of March 2, 1847, chap. 34; act of Jan. 31, 1848. chap. 7; act of May 17, 1848, chap. 41; and the act of March 3, 1849, chap. 111.

This investigation shows a clear, consistent, and unmistakable intent throughout the act to encourage immigration by extending to immigrants a national guarantee of care and protection during the voyage. Its provisions never fail to indicate that the legislation is for the benefit, not of a class of vessels, but of that class of persons who, whether as immigrants or emigrants, are liable to the inconveniences and injuries which it was designed to prevent. There is not one of them that is not as proper and necessary a requirement in the case of a steamship as in that of a sailing vessel, and every consideration of humanity and of national policy which may be presumed to have dictated such legislation in one case will necessitate the conclusion that its benefits were intended to be conferred in the other.

This conclusion is strengthened by what partakes of the character of a legislative exposition of the act in question, found in the subsequent law of July 4, 1864, entitled "An act further to regulate the carriage of passengers in steamships and other vessels." The second section of that law contains a provision that the exemption in section eleven of this act of March 3, 1855, of vessels running to and from ports on the Pacific from the requirements of that act as to provisions and water, shall extend to "vessels" connected with the overland route or routes through Mexico or Central America. As the vessels in question are notoriously steamships, this provision proves them to have been considered by Congress as subject to the general provisions of the passenger act of 1855, otherwise the exemption was unnecessary.

II.

The opposite view to the conclusion just stated is based wholly on a construction of the tenth section of the act under consideration. That section contains but one sentence, composed of three clauses: the first extending the provisions, &c., as to space; the last subjecting the space in steam vessels to inspection under the act; and between them a clause repealing so much of the act of August 30, 1852, as conflicts with the statute itself.

The immediate connection of these clauses in the

same sentence indicates most clearly their connection in the mind of the legislature. The reason for extending the provisions, &c., of the statute must have relation to that conflicting matter in the act of 1852 which is repealed. The nature of the conflicting matter is not stated, but it would naturally be expected to be the same as that described in the section, and if provisions, requisitions, penalties, and liens are found in the act of 1852, which do substantially relate to the space appropriated to passengers, the connection is established beyond question. An examination of that act furnishes the following results:

The act applies only to steam vessels. The main purpose is, as indicated in the title, "to provide for the better security of the lives of passengers," by provisions relating chiefly to the sources of danger peculiar to that class of vessels. But it includes some provisions and requisitions relating to passenger accommodations, as follows: In section nine, subdivision first, the inspectors are to examine the vessel and "satisfy themselves" that she "has suitable accommodations for her crew and passengers." Subdivision fourth contains the form of their certificate thereon, including the following matters: "That she is provided with (here insert the number of state rooms, the number of berths therein, the number of other permanent berths for cabin passengers, the number of berths for deck or other classes of passengers, the number of passengers of each class for whom she has suitable accommodations; *and in case of steamers*

sailing to or from any European port, or to or from any port on the Atlantic or the Pacific, a distance of one thousand miles or upwards, *the number of each she is permitted to carry.*") Then in section ten occurs the following provision and penalty as to excess: "That in those cases where the number of passengers is limited by the inspector's certificate, *it shall not be lawful to take on board of any steamer a greater number of passengers than is certified by the inspectors in the certificate;* and the master and owners, or either of them, shall be liable, to any person suing for the same, to forfeit the amount of passage-money and ten dollars for each passenger beyond the number allowed." Finally, in section thirty-five, after requiring the master to keep a passenger list, under a penalty, it is declared that such penalty, "as well as that for *excess of passengers*, shall be a *lien upon the vessel.*"

We thus find provisions, requisitions, penalties, and liens, distinctly relating to the subject of excess in the number of passengers carried, and reference also to their berth accommodations, both of which matters are the subject of legislation in the act of 1855, and one or both of which are referred to in the first clause of its tenth section.

When examined in like manner for matter conflicting with the system of inspection required by the ninth section of the act of 1855, it is found that American steam vessels are subjected to a rigid system of inspection by two officials, termed the inspector of hulls

same sentence indicates most clearly their connection in the mind of the legislature. The reason for extending the provisions, &c., of the statute must have relation to that conflicting matter in the act of 1852 which is repealed. The nature of the conflicting matter is not stated, but it would naturally be expected to be the same as that described in the section, and if provisions, requisitions, penalties, and liens are found in the act of 1852, which do substantially relate to the space appropriated to passengers, the connection is established beyond question. An examination of that act furnishes the following results:

The act applies only to steam vessels. The main purpose is, as indicated in the title, "to provide for the better security of the lives of passengers," by provisions relating chiefly to the sources of danger peculiar to that class of vessels. But it includes some provisions and requisitions relating to passenger accommodations, as follows: In section nine, subdivision first, the inspectors are to examine the vessel and "satisfy themselves" that she "has suitable accommodations for her crew and passengers." Subdivision fourth contains the form of their certificate thereon, including the following matters: "That she is provided with (here insert the number of state rooms, the number of berths therein, the number of other permanent berths for cabin passengers, the number of berths for deck or other classes of passengers, the number of passengers of each class for whom she has suitable accommodations; *and in case of steamers*

sailing to or from any European port, or to or from any port on the Atlantic or the Pacific, a distance of one thousand miles or upwards, *the number of each she is permitted to carry.*") Then in section ten occurs the following provision and penalty as to excess: "That in those cases where the number of passengers is limited by the inspector's certificate, *it shall not be lawful to take on board of any steamer a greater number of passengers than is certified by the inspectors in the certificate;* and the master and owners, or either of them, shall be liable, to any person suing for the same, to forfeit the amount of passage-money and ten dollars for each passenger beyond the number allowed." Finally, in section thirty-five, after requiring the master to keep a passenger list, under a penalty, it is declared that such penalty, "as well as that for *excess of passengers*, shall be a *lien upon the vessel.*"

We thus find provisions, requisitions, penalties, and liens, distinctly relating to the subject of excess in the number of passengers carried, and reference also to their berth accommodations, both of which matters are the subject of legislation in the act of 1855, and one or both of which are referred to in the first clause of its tenth section.

When examined in like manner for matter conflicting with the system of inspection required by the ninth section of the act of 1855, it is found that American steam vessels are subjected to a rigid system of inspection by two officials, termed the inspector of hulls

and inspector of boilers, whose appointment and duties are provided for and prescribed in the ninth section, and who are wholly independent of the collector of customs, who is responsible for the inspection under the act of 1855.

They are empowered and required, as has been seen, to inspect the passengers' accommodations, and furnish a written certificate, setting forth the particulars as to their capacity. If an inspector fails in any duty imposed by the act, the 24th section requires his removal from office, and subjects him to a further penalty of $100 for each offence. The official certificate is made the test of what the "accommodations" shall be by section 27, and variance therefrom subjects the master to fine and imprisonment. By the first section, if any of the requirements of the act are not regarded, the ship's papers are to be withheld, and the owner and master are made liable to a penalty of $500. That a different system of inspection is here provided for what, so far as relates to passenger accommodations, is a subject common to both acts, needs no argument.

III.

It being established, then, that the act of 1852 contains matters which are to some extent in conflict with the matter of the passenger act, described in the first and last clauses af the tenth section, the question is,

are they of such a nature as to warrant the conclusion that the insertion of that section in the act was considered necessary or expedient as a measure of precaution against their effect, and to ensure the applicability to steam vessels of the parts of the acts described in it?

This can be fairly determined by considering, as Congress doubtless did, the probable condition of things if the section had not been enacted. Suppose an attempt made to enforce the provisions of the act relating to excess, or suitable berth accommodations, in the case of an American steam vessel, would not the defence have inevitably been interposed that in these respects the act of 1855 was inapplicable by reason of the act of 1852? Could not the claimants plausibly urge: We are particularly described in that act; our vessel is required to be examined rigidly in these respects by a different set of officers, and we are obliged to be governed by their certificate, and if we do not conform with the requirements of that act in every particular, owners, master, and vessel, are held liable in heavy penalties. We admit our liability to the act in general, but as to the particular matter of space and inspection thereof, we are specially legislated for elsewhere. If it was intended to subject us to the act of 1855 in these respects, why is it not, in view of this special provision, declared to extend and apply to us, so that we may know by which of two acts concerning the same subject-matter, and requiring our compliance under severe penalties, we are to be governed."

These views would be naturally presented under the circumstances, and would not, indeed, be wholly unwarranted in a legal sense; for it must be remembered, that these matters in question are not original with the act of 1855. They were copied substantially from the act of 1847, and the 7th section of the act of 1848, which were in force when the act of 1852 was passed, and which acts *then*, at least, must have been held applicable to steam vessels, because no such section as has raised this question in the act of 1855 is to be found in them.

In that case, the act of 1852, so far as it establishes different regulations as to space and inspection in American steam vessels, repeals those of the passenger acts. It certainly differs from those acts materially in the following respects: In the passenger acts, the accommodations for passengers are minutely prescribed, and the manner of determining the limitation of the number of passengers particularly regulated. The officers charged with enforcing the law, have no authority in these respects, other than to examine and report whether the provisions of the law have been complied with. But the act of 1852 does not undertake to prescribe the nature of the accommodations, or regulate the mode of determining the question of excess. It seems to empower and direct the inspectors to fix the requirements for each case in their discretion. They are to examine the vessel, and to "*satisfy themselves* that she has *suitable accommodations* for her crew and passengers," and

are required also to certify "the number of passengers of each class for whom she has suitable accommodations, *and, in case of steamers sailing to or from any European port,*" which would include some of the vessels described in the passenger acts, "*the number of each (class) she is permitted to carry.*" Unless by this it is meant, that the inspectors shall determine that number by the rules laid down in the previous passenger act of 1847, it must leave the matter in their absolute control. The 10th section of the act of 1852 further provides, "that in those cases where the number of passengers is limited by the inspector's certificate, it shall not be lawful to take on board of any steamer a greater number of passengers than is certified by the inspectors in the certificate;" making the master and owners liable to any person suing for the same to forfeit the passage-money, and ten dollars for each passenger in excess This goes far to confirm the idea that the judgment of the inspectors is made the test of what is permissible. Their certificate, at all events, and not the law, must be looked to by the parties concerned to ascertain their obligations as to the matters in question. A totally different penalty, moreover, is prescribed for the offence, being of a civil nature, collectable by private suit against owners as well as master, instead of by fine and imprisonment against the master only, as in the passenger act.

It must be evident, from what has been stated, that when the act of 1855 was proposed, the exact relation

of the act of 1852 to the prior passenger acts in respect to this particular subject-matter, to a certain extent common to both, was greatly involved in doubt, with, nevertheless, a strong presumption that certain parts of those acts were, by reason of the act of 1852, no longer applicable to American steam vessels.

The act of 1855 is a mere conglomeration of the prior passenger acts. The substance of the sections of the acts of 1847 and 1848 relating to space and inspection are transferred bodily to it, and, with some enlargement, retain their original form. Under such circumstances, would not a question naturally arise as to the legal effect and mutual relation of the provisions before mentioned of the act of 1852, and of the re-enactment in 1855 of the matter taken from the acts of 1847 and 1848, which had been to some extent impliedly repealed by the act of 1852; or, in other words, whether the simple transfer of certain matters from acts of 1847 and 1848 to an act of 1855 would have the effect of restoring the original force and extent of those matters, when a part of that force and extent and applicability had been taken away by excluding the particular matter of American steamers from its operation in the intervening act of 1852? Would the mere repetition of the general language of the old passenger acts amount to a repeal by implication of the special limitation of it in the act of 1852? or would the special limitation retain its restrictive effect? If the latter view be correct, the terms "extended and made applicable" are employed

in the tenth section of the act of 1855 with entire propriety, to indicate that the effect of this special limitation operating on a certain part only of the act is to be removed, and the term "vessel," which is the subject-matter actually restricted in that part, restored to the full signification which it had prior to that limitation, and which it never ceased to have in the other portions of the said passenger acts.

But there is another point of view, which would give this expression, "extended and made applicable," and the language of the clauses of the tenth section of the act of 1855 in general, a meaning and operation in all their parts; and this arises from the peculiar nature of the provisions of the act of 1852 which relate to the conflicting matter. There are no particular provisions or requisitions in the latter statute relating to the spaces for "steerage passengers." That whole subject is put under the authority of two inspectors, who "satisfy themselves" and certify their conclusions, which must have the force of regulations, since nonconformity with the requirements of the certificate is a punishable offence. As the act of 1855 cannot be presumed to have exhausted all the possibly necessary or proper requirements relating to the steerage "spaces," the discretionary power vested in the inspectors renders the scope of the act of 1852 very much wider in that regard than that of the passenger act. With a simple clause repealing conflicting provisions, the inspectors might well urge, if their authority should be questioned, "More

extensive duties are imposed upon us by this act than the passenger act calls for, and we are liable to punishment for failure to perform them. That act only curtails our authority over those spaces so far as relates to those points in which the acts may conflict; in other words, it gives to the officers mentioned therein jurisdiction over those spaces, so far as to enforce the provisions of that act relating to them, and takes away from our jurisdiction to that extent only. There is a residuum of authority left, therefore, in us, which we are entitled and required to exercise."

The tenth section of the act of 1855 obviates this source of difficulty from double jurisdiction over the same "spaces," by the particular provisions of the first and last clauses of that section. It was necessary to make the provisions of that act cover the broader field of the act of 1852, and so they were "extended and made applicable;" and to show that all power of regulation under the latter act was to be cut off, the spaces are made "subject" to the exclusive jurisdiction of the officials mentioned in the ninth section.

IV.

The foregoing views are presented for the purpose of showing that the act of 1855, as a whole, was intended to apply to steamships as well as to other vessels. But

if, by giving the tenth section of that act a less liberal construction, only a part of the act may properly be regarded as applicable to steamships, still it is submitted that the second section of the act, upon which this action is based, is within that part.

The description given by the tenth section of the part of the act made applicable, is "the provisions, requisitions, penalties, and liens of this act relating to the space in vessels appropriated to the use of passengers." The second section contains provisions, requisitions, and penalties; but whether they relate to "the space appropriated to the use of passengers," depends upon the sense in which that expression is employed in that connection. If it be conceded that the phrase "appropriated to the use of passengers," in the former section, means such a general space as is customarily appropriated for the common use of a number of passengers on the voyage, it cannot fail to be seen that the latter section, in minutely regulating the construction of the berths for the use of passengers, and prescribing the manner of their occupation, contains provisions, requisitions, and penalties relating to that "space" That they were understood and intended by Congress to relate to that subject-matter is quite evident, from the fact that, in the first legislation relating to "space" in the act of 1847, and which relates to that subject only, we find this regulation of the construction of the berths along with that relating to excess. The act of 1855

transfers these provisions in the same immediate connection with those concerning excess, and adds to them requisitions as to the manner of their occupation.

B. H. BRISTOW,
Solicitor General.

U. S. Supreme Court.

THE UNITED STATES,

Appellants,

against

THE STEAMSHIP "CITY OF PARIS," HER ENGINES, &c., THE LIVERPOOL, N. Y. & PHILA. S. S. Co., OWNERS, AND JAMES KENNEDY, MASTER,

Respondents.

BRIEF FOR APPELLEES.

PLATT, GERARD & BUCKLEY,

For Appellees.

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Of Counsel.

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Commercial Advertiser Building, cor. Fulton and Nassau Sts.

1870.

Supreme Court,

OF THE UNITED STATES.

THE UNITED STATES,
Appellants,
agst.
THE STEAMSHIP "CITY OF PARIS," HER ENGINES, &c., THE LIVERPOOL, N. Y. & PHILA. S. S. Co., Owners, and JAMES KENNEDY, Master,
Respondents.

Brief for Appellees.

The libel in this case was filed by the United States *in rem*, against the Steamship "City of Paris," a *foreign vessel*, owned in Great Britain by a *foreign corporation*, and *in personam* against such foreign corporation and James Kennedy, the master of said vessel, a British subject, for the purpose of recovering certain penalties alleged to have been incurred for a violation of the second section of an Act of Congress passed March 3d, 1855, entitled an Act to regulate the carriage of passengers in steamships and other vessels (10th U. S. Statutes at large, 715; Brightley's Digest, page 117).

The said libel, though alleged to be filed in a cause,

civil and maritime, of forfeiture for breaches of the passenger laws of the United States, did not aver any *preliminary* or *existing seizure nor had any such thing taken place before* the institution of this action. See Record, page 1.

The second article states the alleged violation of the law to consist in matters relating to the internal arrangement of the steamer, and to a *construction and occupation of berths on board of said vessel*, and in the *third* and *subsequent articles*, the offences and violations, on account of which *the penalties* sought to be recovered are supposed to have accrued, are stated to consist "in that the master of said 'City of Paris,' took on board said vessel, at *Liverpool* and *Queenstown, passengers* * * * * , and that during the voyage from those ports to the port of New York, the berths of *said passengers were constructed* and occupied, as is in the second article alleged, contrary to the aforesaid second section of the *United States passenger act.*"

By some method of computation cumulative in its nature, penalties amounting in the aggregate to $179,160, were alleged to have been incurred, which were claimed by the Statute to be a lien on the vessel, *enforceable* in *Admiralty*, and the prayer was that the steamer might be arrested, sold and condemned, and the proceeds distributed. Record, page 5. These penalties, however, it may here be observed, do not enure entirely to the benefit of the United States, but, by the Act of July 14, 1864, 13 Statutes at Large, 390, § 9, one-half *goes to the informer*.

Exceptions were interposed by a foreign corporation as owners of the steamer, and by the master, on the

grounds which will be found stated on page 11 of the record.

These were argued before the Honorable Samuel Blatchford, Judge of the United States District Court for the Southern District of New York, and the District Court, (Record, p. 12) without passing on any of the other exceptions held, that the Tenth Exception was well taken.

That Exception was, that the provisions of the second section of the passenger act in question, did not apply to steamers.

The opinion of the District Judge will be found reported in 2 Benedict's Admiralty Reports, p. 88, under the title of "The Steamship Manhattan;" it was affirmed by the Circuit Judge, on appeal in Nov. 1868, and the United States appealed to this Court. A copy of the opinion of the Hon. Samuel Nelson, as Circuit Judge, is annexed.

I propose to present, *first*, the argument in support of the exception, pronounced upon by the District Court, and then to follow with what I urge in support of the remaining exceptions.

I.—An examination of the body of the Act, will show that *steam vessels*, as a class, are *specifically* referred to, only in its 10th section, which provides as follows: "The provisions, regulations, penalties and liens of this Act, *relating to the space in vessels appro-*

priated to the use of passengers, are hereby extended and made applicable to *all spaces* appropriated to the use of steerage passengers *in vessels propelled in whole or in part by steam*, and navigating from, to and between the ports, and in manner as in this Act named, and *to such vessels* and *to the masters thereof;* and *so much* of the Act entitled 'An Act to amend an Act entitled an Act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam, and for other purposes,' approved Aug. 30, 1852, as conflicts with this Act, is hereby repealed; and *the space* appropriated to the use of steerage passengers in vessels so as above propelled and navigated, is hereby made *subject to the supervision and inspection of the Collector of the Customs at any Port of the United States at which any such vessel shall arrive*, and the same shall be examined and reported in the same manner and by the same officers by the next preceding section directed to examine and report;" and it will also be apparent from the same examination that the *provisions relating to "space appropriated to the use of passengers" are found in the first section of the Act, and* NOWHERE ELSE.

No violation is charged in the libel of any provision of the provisions of that section, in terms or by reasonable implication, as *there is no complaint against over-crowding the vessel on any voyage.*

III.—The rule of construction adopted by the Court below gave a meaning and operation to the tenth

section in all its parts: The section recognizing a system of regulations, provided by another Act mentioned therein, for vessels propelled by steam, *extended and applied* certain provisions and penalties found in certain specified portions of this Act, *to that particular class of vessels*, and repealed the general provisions of the Act of 1852 in conflict therewith. If it has not this meaning given to it by the Court, it has no meaning; and, as the Court observed, "might as well be obliterated from the Act."

III.—The rule is that a statute must be construed so as to give sense and meaning to every part, and in carrying out that principle the maxim "*Expressio unius est Exclusio alterius*" is always applicable: and so it results, as was substantially held here, by the Courts below, that the *general words* of the first and second sections of the act are controlled and limited in the case of steamers by the particular language of the tenth section.

In support of the above I refer to

Broom's Maxims, p. 638, marg. paging.
6th American from the 4th London Edition and cases cited.
Sedgwick on Constl. law, p. 423.
Matter of Bliss, 9 John Rep., 348.
Commonwealth *v.* Duane, 1 Binney, 601.
same *v.* Alger, 7 Cush., 53, 89.

IV.—An examination of the Act, especially of the provisions of the nineteenth section, demonstrates that it was not the intention of Congress, that the Act should, as an entirety, be applicable to steamships as a class, and that they were not intended to be embraced within the generic terms "any vessel," and "such vessel" used in the first section of the Act.

1. It is quite plain that if they were not intended to be included within the class referred to in section one, the provisions of section *two* can have no possible application, because manifestly the terms therein employed, "such vessel," have reference only to the class embraced in the provisions of the preceding section; but,

2. By previous legislation, a distinction had always been preserved between steamers and sailing vessels. By the terms of the 19th section it appears that, except as it is extended and made applicable to steam vessels by the terms of section ten, the act was intended as a revision and compilation of a series of statutes originally applicable to sailing vessels alone, as at the time of their passage ocean steam navigation was unknown. Thus, the first act repealed by the provisions of the 19th section, that of March 2, 1819, 3 Statutes at Large, page 488, was entitled "an act regulating passenger ships and vessels," and was the law by which the duties of masters and owners of vessels, traversing the ocean, were defined down to the year 1847, when a new and enlarged system of regulations was introduced by the Act of Feb'y 22, 1847, 9 Statutes at large, p. 127, which, still keep-

ing in mind apparently the fact, that sail and not steam was employed on the ocean, bears the title of, "an act to regulate the carriage of passengers in Merchant vessels." This act continued on the statute book, with various amendments, till repealed by the Act of 1855. But it will be observed that it is only in respect to "*such vessels*"—that is, the vessels within the purview of those acts, that they are repealed.

In the meantime, however, regulations had been adopted by acts relating to steamers where the terms employed in the title were "vessels propelled" in whole or in part by steam (*vide* the Act of 1838, 5 Statutes at large, p. 304, amended and extended in 1843, 5 Statutes at large, p. 626,) till at length was passed the general Act of 1852, 10 Statutes at large, p. 61, which was also a complete revision of all former laws relating to that class of vessels.

In that act, there is a provision (sec. 9, subd. 4, p. 65, Brightley's Digest, p. 852,) for an inspection, (for which the inspection in the 9th section of the Act of 1855 is substituted,) and among other things the certificate is to state "in case of steamers sailing to or from any European port, or to and from any port on the Atlantic or the Pacific, a distance of 1,000 miles or upwards, the number she is permitted to carry," &c., and § 10, (p. 69, Brightley's Digest, p. 858,) provides that it shall not be lawful to carry a larger number than is expressed in the certificate, under penalty of forfeiting the passage money, and $10 for each passenger in

excess, and gives a remedy to passengers not supplied with proper food and suitable lodging.

These provisions, of course, should have appeared as an amendment to the provisions of the Passenger Act of 1847, if that act did apply to steam vessels, and would be inconsistent with the provisions of the Act of 1853, if that was intended to regulate, in all respects, the carriage of passengers on steam vessels; but the use of the general term "vessels," in all the sections prior to the tenth, and the use in that section, and no where else, of the same words employed in reference to steamers in the acts I have been considering, demonstrates, I submit, that the provisions of the 1st and 2d sections are applicable only to the extent created by the tenth section, and that in the generic terms, "any vessel," and "such vessel," steamers are not included.

V.—It was claimed in the argument for the Government in the Court below :

1. That in view of the unquestionable purpose of the Act, all its provisions should be held applicable to steamers; and that,

2. If they are not Steamships bringing emigrants to this country, were actually subject to "no provisions," requisitions, penalties or liens whatsoever.

This is not so, in fact ; but if it were, it would

not authorize a Court in construing the law to depart from the plain words of the statute in order to avoid certain supposed mischievous consequences. The remedy for these must be sought in the Legislature, Sedgwick on Consl. Law, pp. 307, 308, 309, and cases cited.

I will now proceed to the consideration of the points presented by the remaining exceptions.

VI.—The libel is defective in substance and shows no case for the enforcement on the Instance side of the Court in Admiralty of the penalties claimed.

1. This is not a case within the revenue laws of the United States, but if it were, the jurisdiction *in rem* only extends to cases of *seizure* for a forfeiture accruing under a law of impost navigation or trade.

United States *vs.* 350 chests of tea, 12 Wheaton, 486.
The Waterloo, Bl. & Howl, p. 120.

And to confer jurisdiction it should appear affirmatively that there was a good subsisting seizure at the time of the filing of the libel.

See Brightley's Digest, page 24, note g. on the Act of 24th September, 1789, sec. 9, defining the admiralty jurisdiction of the District Courts.

2. The 15th section of the Act should be construed merely as conferring the right to enforce the lien of the penalty, when it is established in the mode provided for by law for the collection of such demands, and not as conferring the right to establish the penalty and enforce the lien simultaneously in a proceeding in admiralty, as the effect of such a construction of the section deprives the parties liable for the penalty of their common law right of trial by jury, which in such cases is secured to them.

The construction herewith contended for was adopted in the case of the United States *vs.* The Steamboat "Josephine," (Dist. Court, scrap book, page 621,) in the case of a proceeding to recover a penalty for transporting passengers without a license, under the act of 7th July, 1838, sec. 2.

5th Statutes at large, p. 304.
Brightley's Digest, p. 848, sec 8.

That law provided, that for the penalties in question incurred by the owners, the steamboat might be libelled.

VII.—If, however, the 15th section is to be considered as creating a new field of jurisdiction and an enlargement of that conferred by the terms of the Judiciary Act considered in the preceding point, then it is contended

1st. That the exercise of that power by Congress must be controlled by the clause in the Constitution, which limits the judicial power of Instance

Courts in Admiralty to cases of admiralty and maritime jurisdiction, and the definition of those terms is to be ascertained by reference to their meaning at the time of the adoption of their Federal Constitution. (See the discussions under the Act of 1845, extending admiralty jurisdiction to the lakes, which will be found in the cases of The Commerce, 1st Black, 579, and the Genesee Chief, 12 Howard, 451, 453, 460. Also The People's Ferry Company *vs.* Beers, 20 Howard, 401).

2d. The declaration, contained in the section under consideration, that the penalties imposed by the provisions of the Passenger Act shall be liens, &c., is insufficient to confer jurisdiction in admiralty where there is nothing maritime in the character of the lien.

Roach *vs.* Chapman, 22 Howard, 132.
The Coernine, 11th Law Reporter, N. S., p. 343.

3d. That a proceeding to recover a penalty was not regarded as a case of admiralty jurisdiction under article 3 of the Constitution, is shown by the cotemporaneous action of Congress in the Judiciary Act, Brightley's Digest, p. 230, and by subsequent legislation, in which actions for penalties are treated as cases falling on the common law side, and triable by a jury.

See Act March 3d, 1815, sec. 4, Brightley's Digest, p. 231.
Ibid. p. 282, sec. 9.
Ibid. p. 362, sec. 178.
Ibid. p. 411, sec. 393.

Also *Ibid.* p. 281, sec. 4, where jurisdiction is conferred on the State Courts in these cases, which is inconsistent with the existence of the admiralty jurisdiction, which must be exclusive.

See Grant *vs.* Poillon, 20 Howard, 168, 169.
See also 1 Kent, p. 372, marginal paging.

There is nothing in the case of the Sarah Ann 8 Wheaton, 391, and the cases which preceded it, which militates against these views: as those were cases of seizure and forfeiture brought within the Admiralty jurisdiction by the construction placed on the word "including," in the ninth section of the Judiciary Act, and they do not decide that a prosecution for a penalty is a matter of admiralty jurisdiction.

See 1st Kent, 9th edition, page 420.

VIII.—No offense or violation of the Act charged in the libel was committed within the territorial jurisdiction of the United States.

There are no provisions, making the landing of passengers an offense, and in that respect the law in question differs from a Revenue Act.

If any recovery is had here, it will not be for any transaction occuring here, or act done here, but for a violation of a rule of construction of a ship belonging to a country where there exists rules applicable to the same subject matter of a very stringent character, with which both owner and master must comply

(see the English Act referred to in Maclaclan on shipping, p. 303).

1. The law in question is in the nature of a municipal law, which can have no extra territorial vigor, and with notice of which citizens of a foreign jurisdiction are not chargeable so as to be responsible for its violation.

Story on Conflict of Laws, secs. 7, 18, 20 and 619.

Wheaton's International Law, 6th edition, page 185, in reference to the Crime of Statutory Piracy.

In which connection see also 1 Kent, Comm. 9th edition, page 363, marginal paging, note *a*.

Sedgwick on Constitutional Law, pp. 83, 70, 71.

Whitford *vs.* The Panama R. R. Co., 23 New York Rep., p. 465.

The 8, 9, 10, 11 and 12th sections of the Act of 1790, defining crimes against the United States, provides for the punishment of crimes committed on "the high seas" by any person, yet, under that Statute a foreigner committing a crime on a foreign vessel, was not punishable.

United States *vs.* Palmer, 3 Wheaton, 610, 642–643.

2. This principle has been applied in the Courts in England, in cases arising under the Merchant's Shipping Act of 1854, where the limited liability created by that statute in case of collision was not allowed to have any operation on foreign vessels.

See Cope *vs.* Doherty, 4 Kay & Johnson's Rep., 367, 372, 375, 379, 383, 390.
The Wild Ranger, 9 Jurist., 134.
The Tallverein, 2 Jurist., N. S., p. 429.

3. The Act of '52, which is in full force, except as modified by the 10th section of the Act in question, by its terms is not applicable to foreign vessels.

See Section 42, Brightley's Digest, p. 855.

4. It has been declared in a subsequent Act—Act of July 25, 1866, § 9–14, Statutes at large, 227–8—that vessels subject to the jurisdiction of a foreign power, are not subject to the navigation laws of this government.

IX.—There can be no accumulation of penalties. The offence is single, susceptible however of being committed under several particulars or circumstances, and the mode of computation adopted by the pleader in this case is as illegal as it is oppressive.

Warren *vs.* Doolittle, 5th Cowen, 678, 681, 683.
Palmer *vs.* Conley, 4th Denio, 377.

The City of Brooklyn *vs.* Toinbee, 31 Barb., p. 282.

There is no proper, succinct and definite statement of the cause of action: as it is not an information, it is not sufficient to follow the language of the statute.

X.—The statute in question, if it confers admiralty jurisdiction at all, creates a specific remedy by that particular method of procedure against the vessel alone, and not against the vessel, master and owners. The remedy, therefore, must be sought in the way provided by the statute.

Rex *vs.* Robinson, 2 Burrowes' Reports, pp. 803, 805.
Cited and approved in 23 N. Y. Rep., 554.

The joinder excepted to is also contrary to the admiralty practice.

See the Zenobia, Abbott's Adm., p. 48.

XI.—This is not a case for strict or rigid construction against the ship or its owners.

No passengers are before the Court seeking a redress for any grievance, nor is there any allegation of fact from which it can be inferred that any grievance was or could be sustained.

The violation complained of is a technical one of measurement merely; no over-crowding is alleged, and without that there is no actual or legal breach of the act according to its true spirit and meaning.

The penalties for its breach going chiefly to the measurer or other custom-house official, who, as informer, hopes to realize a large share of the claim sought to be enforced for his advantage in the name of his Government.

XII.—It is, therefore, submitted that the decree below should be affirmed.

T. C. T. BUCKLEY,

For Respondents.

U. S. CIRCUIT COURT.

THE UNITED STATES
vs.
THE STEAMSHIP "MANHATTAN."

This was an appeal on behalf of the United States, from a decree made by Judge Blatchford, dismissing the libel. There were several cases brought against different steamers, all involving the same questions, which are disposed of by this decision.

NELSON, C. J.—The libel in this case is founded on the second section of the Act of Congress passed March 3d, 1855, which provides the mode and manner of the construction of births in passenger vessels, and inflicts a penalty of five dollars for each passenger on board such vessel on the voyage. The fifteenth section of the Act makes the vessel liable for these penalties as liens on the same. Among the defences set up is an exception to the libel, that the second section of the Act does not apply to steamships, and on this ground the libel was dismissed by the Court below. We concur in this opinion. The tenth section provides that the "provisions, regulations, penalties and liens of this Act, relating to the space in vessels appropriated to the use of passengers, are hereby extended and made applicable to all spaces appropriated to the use of steerage passengers in vessels propelled in whole or in part by steam," and the spaces so appropriated to the use of steerage passengers in vessels so propelled and navigated is made subject to the inspection of the Collector

of the port. It should be observed that the first section which relates to the spaces to be appropriated to passengers uses the term "any vessel" as does the second and other sections, without limiting the description to a sailing or steam vessel; and if this term "any vessels" embraces steam vessels, and which position the libelants must maintain in order to succeed, then the tenth section is superfluous and unmeaning. Why apply the penalties applicable to this first section to steamboats, by special provision, if the term "any vessel" already embraced them? It would be unjust to impute such an absurdity to Congress. It is clear that the law makers understood the act not to apply to steam vessels, unless when so expressed in terms.

Decree below affirmed.